
1991 Wis Eth Bd 2
DISQUALIFICATION; STATEMENTS OF ECONOMIC INTERESTS;
IMPROPER USE OF OFFICE

An official of a state agency may continue to receive income from a former partnership where the income is unrelated to the official's holding public office. The income is reportable but is not a security if it is derived from the former partner's share of receivables. The official need not disqualify from matters before the agency in which the former partnership is involved as long as the official has no economic interest in those matters. Eth. Bd. 622

January 10, 1991

Facts

[1] This opinion is based upon these understandings:

- a. You have been appointed to a top management position in a state agency.
- b. Before you assume your new position you will terminate your partnership in a law firm.
- c. You will continue to receive profit distributions from the law firm derived from receivables arising from work performed before your departure.
- d. You are a participant in pension and retirement plans with the law firm and you may decide to leave the funds with those plans.
- e. None of the monies in the plans are invested in the law firm and the firm's operations will not affect your interest in the plans.
- f. Partners and associates of the law firm can be expected to regularly represent clients in dealings with the agency.

Questions

[2] The State of Wisconsin Ethics Board understands your questions to be:

1. May you, consistent with the Ethics Code, continue to receive from the law firm profit distributions derived from work performed prior to your assuming your new position?
2. If so, how should you account for your interest in such profits?

3. May you retain your interest in the firm's pension and retirement plans?
4. Do you need to take any action to distance yourself from matters before the agency in which your former law firm will be involved but in which you did not directly participate?

Discussion

[3] Wisconsin's Ethics Code provides that a state public official may receive anything of value if the activity for which it is given is unrelated to the official's use of the state's time or resources and the official can show by clear and convincing evidence that the receipt was unrelated to and did not arise from the recipient's holding a public office. Section 19.56(3)(b), *Wisconsin Statutes*. It is apparent that your receipt of monies arising from a prior partnership agreement and obligations incurred before you became a state official would meet this test. This also is true of your interest in the firm's pension and retirement plans.

[4] With respect to reporting, you will be required to identify all sources from which you derived income of at least \$1,000 during the reportable year. Depending on the size of your partnership interest, you might also be required to identify payers to the organizations from which you derived such income. Your interest in receivables, as long as that interest is not dependent on the profitability of the law firm, would not be a security under § 19.44(1)(b), *Wisconsin Statutes*. In general, reporting requirements will be evident from the Statement of Economic Interests forms that you will receive.

[5] Finally, you need not disqualify yourself from matters before your agency involving your former law firm, in which you had no direct participation, as long as you have no economic interest in the matter.

Advice

[6] The Ethics Code does not pose a bar to your receipt of income from your former law firm, as long as the income does not arise from and is unrelated to your official position. Such income is reportable on the required Statement of Economic Interests but the right to receive that income is not a security if the income is not dependent on the firm's profitability. Finally, you need not disqualify yourself from matters in which your former partnership is involved as long as you do not have an economic interest in those matters.